

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>DORA DAVIS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 2:05-CV-1040-WKW</b>
	)	
<b>ALBANY INTERNATIONAL CORP.;</b>	)	
<b>JEFF JOHNSTON,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANT JEFF JOHNSTON'S MOTION TO STRIKE**

Defendant Jeff Johnston ("Johnston") moves the Court to enter an order striking or dismissing the Plaintiff's claims for "extra-contractual" damages (i.e., compensatory or punitive damages) and the Plaintiff's demand for a trial by jury on her claims brought under the Employee Retirement Income Security Act ("ERISA"). In support of this motion, Johnston states:

1. In Claim Three of the Complaint, the Plaintiff states claims against Johnston for an alleged violation of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

2. To the extent that they apply to her ERISA claim, the Plaintiff's claims for "extra-contractual" damages in the form of compensatory or punitive damages are due to be stricken or dismissed because ERISA precludes claims for such relief. See Mertens v. Hewitt Associates, 508 U.S. 248, 257-58 (1993); McRae v. Seafarers' Welfare Plan, 920 F.2d 819, 822 (11th Cir. 1991); Bishop v. Osborn Transportation, Inc., 838 F.2d 1173, 1174 (11th Cir.), cert. denied, 488 U.S. 832 (1988); Spinelli v. Gaughan, 12 F.3d 853, 857 (9th Cir. 1993).

3. Additionally, the Plaintiff is not entitled to a trial by jury under ERISA. Blake v. Unionmutual Stock Life Ins. Co., 906 F.2d 1525, 1526-27 (11th Cir. 1990); Spinelli, 12 F.3d at

857-58; Cox v. Keystone Carbon Corp., 894 F.2d 647, 650 (3rd Cir.), cert. denied, 498 U.S. 811 (1990).

WHEREFORE Defendant Jeff Johnston respectfully requests that the Court enter an Order striking or dismissing the Plaintiff's claims for compensatory and punitive damages and her demand for a jury trial on her ERISA claim.

Respectfully submitted,

s/Charles A. Powell, III  
Charles A. Powell, III (ASB-6957-E68C)

s/Jennifer F. Swain  
Jennifer F Swain (ASB-7761-167J)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 26, 2006, I electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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s/Jennifer F. Swain

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